

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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MARK J. SIMMONS,

Plaintiff,

ORDER

23-CV-7101 (OEM) (RML)

-against-

NYC DEPT. OF CORRECTIONS,

Defendant.

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ORELIA E. MERCHANT, United States District Judge:

On September 19, 2023, Plaintiff Mark J. Simmons, appearing *pro se*, filed this action against the New York City Department of Correction. Complaint, ECF 1. However, Plaintiff did not pay the \$402 filing fee¹ or file an application to proceed *in forma pauperis* (“IFP”). On September 26, 2023, the Clerk’s Office notified Plaintiff of this deficiency and provided him with an IFP application. Notice of Deficient Filing, ECF 2. Plaintiff did not respond. On January 10, 2024, the Court extended the time to comply with the Notice of Deficient Filing. On January 30, 2024, Plaintiff filed an IFP application. IFP Application, ECF 5. The Court denied Plaintiff’s IFP application with leave to pay the filing fee or re-file by February 16, 2024. Docket Entry dated 01/31/2024. Plaintiff did not respond. On May 9, 2024, the Court granted Plaintiff an extension to file an amended IFP application or pay the \$402 filing fee. On August 12, 2024, Plaintiff filed an amended IFP application. Amended IFP Application, ECF 7. Plaintiff’s amended IFP application is denied as set forth below.

Plaintiff’s amended IFP application indicates that he owns a business but he has no income or assets and still pays \$2400 for rent and an undisclosed amount for a cellphone and

¹ The Court’s filing fee increased to \$405 as of December 1, 2023. Because Plaintiff filed this action before the filing fee increased, he is only required to pay \$402, should he wish to pay the filing fee.

claims his wife as a dependent. *Id.* As currently presented, Plaintiff's amended IFP application is implausible.

“When an applicant fails to explain how he supports himself, courts generally regard his application as incomplete and insufficient to establish an entitlement to *in forma pauperis* status.” *Dan M. v. Kijakazi*, 22-CV-664, 2022 WL 2069112, at *3 (D. Conn. May 19, 2022). “‘Because no one can live on no income and no assets,’ affidavits asserting that the plaintiff has no income and no assets *without further explanation* ‘must be incomplete and, by extension, fail to support *in forma pauperis* status.’” *Jones v. ACS/Queens Field Off.*, 23-CV-5742, 2024 WL 2818138, at *1 (E.D.N.Y. June 3, 2024) (quoting *Amanda M. v. Kijakazi*, 22-CV-353, 2022 WL 1395941, at *1 (D. Conn. Apr. 29, 2022)); *Bey v. Raso*, 24-CV-03528, 2024 WL 3252569 at *1 (E.D.N.Y. July 1, 2024).

Accordingly, Plaintiff's IFP application is denied. To proceed with this action, Plaintiff is granted until October 20, 2024, to either file a Long Form IFP application or to pay the \$402 filing fee (made payable to the Clerk of Court for the Eastern District of New York). No further extension will be granted without good cause shown. No response is required by Defendant at this time. If Plaintiff fails to comply with this Order within the time allowed, this action will be dismissed without prejudice.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore IFP status is denied for the purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is respectfully directed to mail a Long Form IFP application to Plaintiff, along with a copy of this Order, and note the mailing on the docket.

SO ORDERED.

/s/

ORELIA E. MERCHANT
United States District Judge

Dated: October 7, 2024
Brooklyn, New York